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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 14 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

MCI Telecommunications Corporation)
 Petition for Rulemaking: Billing and)
 Collection Services Provided By Local)
 Exchange Carriers For Non-Subscribed)
 Interexchange Services)

RM No. 9108
 DA 97-1328

AT&T CORP. REPLY COMMENTS

Pursuant to Section 1.401 of the Commission's Rules and the Public Notice released June 25, 1997, AT&T Corp. ("AT&T") hereby submits its reply to other parties' comments on MCI's Petition For Rulemaking ("Petition").¹

The non-ILEC commenters unanimously support the Petition's request for the partial re-regulation of incumbent LECs' billing and collection ("B&C") arrangements for non-subscribed interexchange services. The ILEC commenters strenuously oppose the Petition, but offer no evidence of any kind for their claims. Indeed, the only evidence in the record strongly supports initiation of the requested rule making. The non-ILEC commenters compellingly demonstrate that IXCs cannot feasibly bill for non-subscribed services without raising prices beyond economically sustainable levels; and that following enactment of the 1996 Act, ILECs

¹ A list of parties submitting comments and the abbreviations used to identify them are set forth in an appendix to these reply comments.

have both the means and the motive to exploit their market power by raising their B&C prices or simply terminating existing agreements. Moreover, the comments confirm that such ILEC abuses of their local exchange monopolies are not mere theoretical concerns -- incumbent LECs already are attempting to raise the price of B&C services and making other unreasonable unilateral demands.

The comments confirm that non-subscribed services represent a significant portion of the interexchange market, and one that is particularly important to low-income consumers and customers without residential telephone service.² In addition, the non-ILEC commenters strongly support MCI's showing that billing options other than LEC B&C, such as direct-billing or use of other third parties' services, would not be financially viable in the absence of rate increases or surcharges of some kind.³ Non-subscribed services generate low monthly revenues per customer and incur relatively high rates of uncollectibles. As a result, AT&T's estimates that its return on sales for these services in the current billing and collection environment is more than one-third lower than for presubscribed calling.⁴ If IXC's were required to use sources other than ILEC

² See, e.g., AT&T, pp. 1-2; DNSI, pp. 2-3; TRA, p. 4; VarTec, pp. 2-3; WorldCom, pp. 2-3. Some ILECs cavil that evidence that the public interest is served by the continuing availability of non-subscribed services should be disregarded, apparently because IXCs earn revenues from them. See, e.g., SBC, p. 4 (complaining that MCI's interest in non-subscribed services is not "altruistic"). Of course these services would not exist -- and will not continue to exist -- unless carriers can earn reasonable returns from them, but this fact in no way lessens the public's interest in maintaining vigorous competition in these markets.

³ See AT&T, pp. 2-3; Consolidated, p. 6; DNSI, pp. 3-4; Excel, pp. 10-11; Phonetime, pp. 5-6; Pilgrim, p. 2; Sprint, p. 3; Telco, pp. 10-12; TRA, p. 4; VarTec, pp. 4-5; WorldCom, p. 3.

⁴ See AT&T, p. 2.

B&C to bill for non-subscribed services, the combination of higher billing and collection costs and lower returns would cause carriers to lose money on many invoices and thus seriously jeopardize the viability of such offerings.

In contrast to the substantial evidence placed in the record by the commenters supporting the Petition, the ILECs offer only shrill (and utterly unsupported) assertions that partial re-regulation of B&C would force them to "subsidize" other carriers' offerings.⁵ The ILEC commenters point to the Commission's 1985 order detariffing LEC billing and collection,⁶ and contend that a competitive B&C market has developed during the intervening twelve years. However, their comments fail even to address -- much less to refute -- the two fundamental arguments supporting the petition:

First, the Detariffing Order rested on the Commission's assumption that IXCs rapidly would develop the capacity to direct-bill their customers, and that third-party billing also would be a financially viable option. In fact, as ample evidence in the record shows, ILECs retain an insuperable cost advantage in B&C for non-subscribed services.⁷ Other entities could potentially provide billing and collection, but none can do so at as low a cost as the ILECs, or at a cost sufficiently low to maintain the viability of non-subscribed services.

ILECs' cost advantage for B&C services is not derived from any efficiencies they have created, but is an artifact of their historical status as monopoly providers of local exchange

⁵ See Ameritech, p. 4; BellSouth, pp. 2-3; C&W, pp. 4-5; SNET, p. 6; SBC, pp. 4-5; U S West, pp. 3-5, 7-12.

⁶ Report and Order, Detariffing of Billing and Collection Services, CC Docket No. 85-88, 102 F.C.C.2d 1150 (1985) ("Detariffing Order"), at 1169.

⁷ See AT&T, pp. 4-6; CompTel, pp. 4-5; DNSI, pp. 6-7; Pilgrim, pp. 4-5.

services (a monopoly that was in many cases maintained by force of law). Every subscriber within an ILEC's territory receives a monthly bill from that carrier, and the costs of billing are built into the incumbent's rates. In order to provide B&C for non-subscribed services, an ILEC incurs only the relatively tiny incremental cost of adding a single page to its bill, while other parties must bear the full costs of creating and mailing a bill in its entirety.⁸ An ILEC's cost advantage becomes relatively less significant as a customer's bill grows larger, and at some point may be outweighed by the value to an IXC of communicating with its customers through direct-billing. But when a bill is for a small amount, as is generally the case for non-subscribed services, this cost differential frequently will exceed an IXC's potential profit on the invoice.

The Commission's findings in the Detariffing Order are explicitly premised on its assumption that IXCs could obtain B&C on a financially viable basis from alternative sources. However, all of the evidence in the record suggests this premise is incorrect in the case of non-subscribed services. The non-ILEC commenters have provided estimates of their costs to use alternative billing methods, and the impact that practice would have on the profitability of non-subscribed services. Indeed, the ILECs implicitly admit that IXCs would incur higher costs by using other B&C methods when they argue that they should not be forced to "subsidize" their

⁸ See AT&T, p. 3; Phonetime, pp. 3; Sprint, p. 3. As the non-ILEC commenters show, entities such as electric utilities also mail monthly bills, but these firms' customer bases will not be contiguous with that of any ILEC, and so these third parties will also incur greater costs for B&C than would an incumbent LEC.

ILECs do incur other costs for B&C such as for responding to customer inquiries; however, these costs are certainly no higher than those that would be incurred by any other party providing the same services, and may well be lower in light of the fact that ILECs already have resources devoted to those tasks for their local services and need only incur whatever incremental costs are caused by non-subscribed services.

competitors by providing billing and collection on the same terms and conditions that have prevailed for over a decade.⁹ If the ILECs regard provision of B&C as a "subsidy," it can only be because their charges to provide that service -- which include an element of profit for the providing ILEC -- are lower than the costs of alternative sources.

Second, although it formerly was in the ILECs' interest to keep B&C prices at a level that permitted those services to flourish, so as to maximize their own revenues for billing and collection, the 1996 Act radically alters their economic incentives. Because ILECs now can potentially offer non-subscribed interexchange services themselves, they have a strong motive even before they enter the interexchange market to raise B&C prices to a level that forces their potential IXC competitors to raise their prices or exit this market.

Prior to the 1996 Act, the largest ILECs were restricted from offering interLATA services and so could not compete directly with IXCs. Thus, in order to maximize their revenues, ILECs were incited to price B&C at a level that permitted them to profit from those services, but which also permitted IXCs to set a price for non-subscribed services that was sufficiently low to stimulate demand (and thus, in turn, to increase demand for ILECs' billing and collection). With the enactment of the 1996 Act, however, ILECs -- in particular the RBOCs -- potentially will be competing directly with IXCs in the interLATA market. As a variety of commenters

⁹ Neither the Petition nor the commenters supporting it have requested that the Commission force ILECs to reduce B&C rates or deny them a reasonable return on such services, but have merely suggested that ILECs should not be permitted to discriminate against their competitors by refusing to offer billing and collection to other carriers, or by imposing price increases that are not related to their actual costs to provide those services.

explain,¹⁰ ILECs' potential entry into the non-subscribed services market gives them a strong incentive now either to raise their prices for billing and collection or to refuse to provide such services, because by doing so they can increase their competitors' costs and force them either to exit the market or raise their prices.

The comments also make plain that the threat that ILECs will attempt to abuse their market power in this fashion is not simply hypothetical. A wide variety of commenters state that they, like MCI, recently have been subjected to ILEC demands for sharp B&C price increases, or have been offered onerous contract terms in "take it or leave it" fashion.¹¹ Although some ILECs protest that they have not made such demands,¹² the increasing prevalence of these practices makes clear that the 1996 Act has fundamentally altered the market for billing and collection for non-subscribed services. IXCs should not be forced to resort to repeated (and after-the-fact) complaint proceedings in order to resolve a systemic problem growing out of ILEC monopolists' attempts to leverage their local exchange market power into the non-subscribed services market.

Some ILEC commenters attempt to explain B&C price increases by arguing that their costs to provide these services are rising. As a preliminary matter, AT&T would not oppose legitimate increases in B&C costs that can be shown to be linked to a demonstrable increase in an ILEC's costs to offer those services, and nothing in the comments suggests that any party would

¹⁰ See AT&T, p. 7; CompTel, pp. 5, 8; Consolidated, pp. 3-4; DNSI, p. 6; Excel, pp. 7-8; HBS, pp. 8-9; OAN, pp. 3-4; Phonetime, pp. 2-3; Telco, pp. 6-7.

¹¹ See AT&T, pp. 3-4; Consolidated, p. 2; Frontier, pp. 2-3; HBS, pp. 1-2; Pilgrim, p. 4; Sprint, pp. 3-4; TRA, p. 4; WorldCom, p. 4.

¹² See BAN, pp. 1-2; U S West, p. 2.

do so. However, the explanations offered by the ILECs are unpersuasive, and in some cases directly contradictory. For example, SNET contends that its B&C costs are rising because callers are making more casual calls, which it asserts increases its costs to provide customer service.¹³ SBC, however, complains that its B&C costs increase when IXCs use its services for fewer such calls.¹⁴ Moreover, SBC's explanation for its pricing policy is, at best, disingenuous. That ILEC asserts that "SWBT's various pricing plans are based solely upon an individual customer's total toll messages billed," attempting to justify its requirement that customers commit 85% of their calls as a form of volume discount. But this pricing plan is in no way linked to the absolute volume of calls an IXC commits to SWBT for billing. Under SWBT's "volume" pricing, a carrier with 100 messages originating in SWBT's territory that contracts with that carrier to provide B&C for at least 85 of those calls can obtain a better price than a carrier with 1,000,000 messages that commits "only" 500,000 calls to SWBT for billing and collection. Such a pricing plan cannot possibly be justified on the basis of SWBT's actual costs to provide B&C.

¹³ SNET, pp. 8-9. SNET and CBT also complain that some IXCs have provided inaccurate or confusing billing information that has created difficulties for these ILECs' local exchange customers. See id.; CBT, pp. 2-3, 6. AT&T agrees that ILECs should be able to impose reasonable requirements designed to minimize such difficulties; however, the Commission should carefully scrutinize any efforts to tighten existing requirements, as they could easily be used as a pretext to exert anticompetitive pressure on an ILECs' competitors.

¹⁴ SBC, pp. 8 (contending that SBC incurs higher costs to offer B&C "on a non-volume commitment basis").

Finally, those commenters that support the Petition generally concur with MCI's suggestion that the industry establish a clearinghouse for billing non-subscribed services.¹⁵ The non-ILEC commenters also urge the Commission to impose a nondiscrimination requirement as an interim measure until such a clearinghouse can be formed.¹⁶ However, a nondiscrimination requirement alone will not be sufficient to prevent ILECs from engaging in anticompetitive B&C practices. As AT&T showed in its comments, in order to prevent a price squeeze in which an ILEC charges the same inflated B&C prices to both its competitors and its own affiliates, the Commission should require that charges for billing and collection be reasonable, and should adopt a presumption that any increase in an ILEC's B&C rates currently in force that cannot be shown to be directly attributable to increased costs to provide those services do not satisfy that standard.¹⁷

¹⁵ See AT&T, p. 8; C&W, p. 3; Excel, p. 8; HBS, pp. 10-11; Telco, p. 8.

¹⁶ See AT&T, p. 9; Consolidated, pp. 10-11; HBS, pp. 9; Phonetime, p. 8; Telco, p. 7. AT&T agrees with SBC and other commenters that § 272(c) imposes a nondiscrimination requirement on the BOCs that encompasses B&C services. See AT&T, pp. 8-9; ISA, pp. 3-4; SBC, p. 17; WorldCom, pp. 5-6. However, § 272(c) will not reach the conduct of non-BOC ILECs, which, as AT&T showed in its comments, present the same risks of anticompetitive behavior in the B&C context as do the BOCs. See AT&T, pp. 9.

¹⁷ AT&T, pp. 9-10. See also Phonetime, p. 8.

CONCLUSION

For the reasons stated above and in its comments, AT&T supports MCT's Petition to the extent that it seeks to partially re-regulate ILEC billing and collection for non-subscribed services.

Respectfully submitted,

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August 14, 1997

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Competitive Telecommunications Association ("CompTel")
Consolidated Communications Telecom Services, Inc. ("Consolidated")
Digital Network Services, Inc. ("DNSI")
Excel Communications, Inc. ("Excel")
Frontier Corporation ("Frontier")
Hold Billing Services, Ltd. ("HBS")
Interactive Services Association ("ISA")
Oan Services and Integretel, Incorporated ("OAN")
Phonetime, Inc. ("Phonetime")
Pilgrim Telephone, Inc. ("Pilgrim")
Southern New England Telephone Company ("SNET")
SBC Communications, Inc. ("SBC")
Sprint Communications Company, L.D. ("Sprint")
Telco Communications Group, Inc. ("Telco")
Telecommunications Resellers Association ("TRA")
U S West, Inc. ("U S WEST")
Vartec Telecom, Inc. and Communigroup of KC, Inc. ("VarTec")
WorldCom, Inc. ("WorldCom")

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 14th day of August, 1997 a copy of the foregoing "AT&T Corp. Reply Comments" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.


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August 14, 1997

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